Supreme Court, U.S.
FILED
00-145 JUL 24 2000
OFFICE OF THE CLERK

NO.

IN THE

Supreme Court of the United States

MULTI RESOURCE USA, INC. AND JIAN DONG WANG

Petitioners

V.

JINHAI GROUP CORPORATION, ANDREW C. MAO, KATHY H. MAO AND CHEER INTERNATIONAL, INC.

Respondents

On Petition For Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

BOB MABRY
Counsel of Record
440 LOUISIANA, SUITE 900
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(713) 236-7784

62 pp

QUESTIONS PRESENTED

The district court granted leave for a party to intervene as a plaintiff against the original plaintiffs.

1. Did the original plaintiffs need permission to replead when all parties agreed in writing that the original plaintiffs should be allowed to replead?
2. Absent any of the bars to repleading in *Foman v. Davis*, 371 U.S. 178 (1962), should the plaintiffs have been allowed to replead?

CORPORATE DISCLOSURE STATEMENT

Neither Multi Resource U.S.A., Inc. nor Jinhai Group Corporation has any parent company that owns ten percent or more of the corporation's stock, Tienjin Multi Resource International Company, Inc. owns 50 percent of the stock of Cheer International, Inc.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

Multi Resource U.S.A., Inc. and Jian Dong Wang, *Petitioners*

v.

Jinhai Group Corporation, Andrew C. Mao, Kathy H. Mao, and Cheer International, Inc., *Respondents*

PETITION FOR A WRTI OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Multi Resource U.S.A., Inc. and Jian Dong Wang respectfully petition for a writ of certiorari to review the judgment of the United States Court of

Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

No opinions were given in this case. The order of the Court of Appeals (App. F, *infra.*, A-27) is unreported. The orders of the district court. (Apps. A-G, *infra.*, A-1-A-22) are unreported.

JURISDICTION

The Court of Appeals entered its judgment on March 2, 2000 (App. F, *infra.*, A-27). The clerk of that Court granted a motion to extend time to file Appellant's Petition for Rehearing En Banc March 17, 2000. (App. G, *infra.*, A-22) The Court of Appeals denied a motion for rehearing and a motion for rehearing en banc April 24, 2000. (App. I, *infra.*, A-34).

The Supreme Court has jurisdiction of this matter pursuant to 28 U.S.C.A. §1254(1) (West 1993).

CONSTITUTIONAL PROVISION AND RULE INVOLVED

No person shall * * * be deprived of * * * property, without due process of law. U.S. Const. amend. v.

> A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has

not been placed on the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or written consent of the adverse party. * * *

Fed. R. Civ. P. 15(a).

STATEMENT

The district court had diversity jurisdiction of this case pursuant to 28 U.S.C.A. §1322(a). Multi Resource U.S.A., Inc. is a Georgia corporation.

Mr. Wang is a citizen of the People's Republic of China who is not a U.S. permanent resident. The Maos and Cheer are Texas citizens. The amount in controversy was in excess of $75,000.00.

China has two types of currency- a domestic currency, which is not to be exported, and a currency for export, the export of which is strictly limited. Many Chinese domestic companies have vast sums of domestic currency and a strong desire to diversify their investments to other countries, particularly to the U.S.

Mr. Jian Dong Wang took payments owed to his company, at least one of which was paid to him at the direction of Mr. Yan Jun Zhang, to buy a piece of commercial real estate in Houston, Texas.

Mr. Li Ji Xing put two checks in Mr. Wang's pocket on the way to the airport in Tianjin, China. Mr. Wang looked briefly at the two checks. Neither of them was drawn on a bank

account of Jinhai Group Corporation. He took the checks to the Davina Plastics Factory in Shenzhen, China. Shenzen is near the Chinese border. He had been directed to do that by a Mr. Wu of Davina Plastics in Hong Kong.

Davina Plastics of Hong Kong then wired funds to Meyer International Ratite Development, Inc., a Georgia corporation controlled by Mr. Wang. Meyer Ratite then wired the money to Multi Resource U.S.A., Inc., also owned by Mr. Wang. Multi Resource then wired money to Cheer International, Inc., a Texas corporation. At that time Andrew and Kathy Mao, domiciliaries of Texas, controlled Cheer.

Mr. Wang was to put up half of the money to buy the land, and the Maos were to put up the other half.

Cheer, through the Maos, issued a stock certificate in the name of Tienjin Multi Resource International Company, Inc. a Chinese company

controlled by Mr. Wang. Tienjin Multi Resource International Company, Inc. Mr. Wang is authorized to act on Tienjin Multi Resource International Company, Inc.'s behalf in this case. Andrew Mao wrote a letter to the Immigration and Naturalization Service confirming that Tienjin Multi Resource was a half owner of Cheer and that it had a veto power over Cheer's decisions.

The Maos manipulated the funds in their account to make it appear that they were making the investment they had promised to make. They never made the investment. Cheer bought the property with the money it had gotten from Mr. Wang and financed the rest.

When Mr. Zhang found out that the Maos hadn't put up their share, he had Jinhai Group Corporation sue the Maos and Cheer in Texas state court. On August 6, 1998, that case was nonsuited voluntarily by Jinhai right before it was to go to trial. August 28,

1998 Multi Resource U.S.A., Inc. and Mr. Wang sued the Maos and Cheer in the Southern District of Texas, Houston Division. The District Court's original order for the initial scheduling conference is in Appendix A at A-1.

September 21, 1998- Jinhai sought to intervene. It appears that Jinhai and the Maos and Cheer worked out a settlement between themselves. Cheer sold the property to Jinhai in derogation of any rights Mr. Wang might have. The settlement agreement provided that Andrew Mao benefits if Cheer betrays Mr. Wang, a violation of their fiduciary duty to Tienjin Multi Resource. Jinhai obtained an arbitration award against Cheer without Mr. Wang's knowledge and possibly without the Maos' knowledge. Mr. Zhang later told Mr. Wang that he, Mr. Zhang, had bribed the Chinese arbitrators to obtain the award. Though Jinhai sued the Maos and Cheer, Jinhai settled with them before they did so. The Maos benefit more in

the settlement if Mr. Wang can be disposed of quickly, and the title to the property can be cleared faster. This is a *Mary Carter* agreement, illegal under Texas law.[1]

December 11, 1998- All parties agreed in writing to Jinhai's intervention, subject to all parties having the right to replead. *See* App. C at A-7.

December 17, 1998- Jinhai was allowed to intervene. A copy of this order is included in Appendix B at A-5.

January 6, 1999- All parties filed a joint motion for leave to amend pleadings on the day before the initial pretrial conference. A copy of this order is included in Appendix C at A-7.

January 7, 1999- District Court granted leave to amend pleadings by March 1, 1999. It asked Multi Resource U.S.A. and Wang on the one hand and Jinhai on the other to

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[1] *Elbaor v. Smith*, 845 S.W.2d 240,247 (Tex. 1992).

produce documents showing the original source of the funds in question. A copy of this order is included in Appendix D at A-12.

February 22, 1999- District Court "terminated" deadline to amend pleadings. Both sides produce documents showing the transfer of the funds from Hong Kong to Houston. A copy of this order is included in Appendix E at A-16. *At this point, though Multi Resource U.S.A., Inc. and Wang have claims against Jinhai and defenses to Jinhai, they cannot be heard.* Jinhai produced Chinese bank documents. Multi Resource U.S.A., Inc. and Wang did not. Jinhai's documents did not show that the funds came from Jinhai Group Corporation.

April 16, 1999- Multi Resource U.S.A., Inc. and Wang filed a proposed amended complaint pursuant to their response to motion for summary judgment and motion for continuance of the summary judgment hearing. Multi Resource, U.S.A., Inc.'s and

Wang's summary judgment evidence showed that the companies upon which the funds were purported drawn are not Jinhai Group Corporation nor are they affiliated with them. Their summary judgment evidence also showed that Mr. Zhang is not authorized to bring suits on behalf of Jinhai.

April 22, 1999- District Court overruled Multi Resource U.S.A.'s and Wang's Motion for Continuance. This is Appendix E at A-16

May 13, 1999- Summary judgment against Multi Resource U.S.A., Inc. and Wang signed. This is Appendix F at A-20.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit has sanctioned a departure from the accepted and usual course of judicial proceedings so far as to call for an exercise of the

Supreme Court's power of supervision.[2] The Fifth Circuit has also decided a federal question in conflict with an applicable decision of this court, *Foman v. Davis*, 371 U.S. 178 (1962)[3].

The Fifth Circuit failed to follow its own precedent in this case, *Lowrey v. Texas A & M University System*, 117 F.3d 242 (1997).

United States District Courts terminate more than 87 percent of their civil cases before the pretrial conference.[4] This statistic does not include the cases parties settle on their own.[5]

These cases appear to be disposed of through motions to dismiss for failure to state a claim or summary judgment. Reasonable people disagree as to whether these terminations are

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[2] Supreme Court Rule 10.1(a)

[3] Supreme Court Rule 10.1(b)

[4] Statistics Division, Administrative Office of the United States Courts, Statistical Tables for the Federal Judiciary 36(June 30, 1999)

[5] *Id.*

consistent with notice pleading in the first instance and the guarantee to the right to a jury trial in the second instance. However, it is utterly unreasonable and unjust to not allow a plaintiff made a defendant through an intervention not to replead.

Multi Resource U.S.A. and Wang were sitting ducks for the defendants' and intervenor's summary judgment motions. That Jinhai Group Corporation was not, in fact, before the court could not be supported by their pleading because they were not allowed to amend.

Federal civil actions proceed by complaint and answer. For a party whose property is at risk by a complaint to not be allowed to answer is utterly in consistent with due process of law.

The right to plead is the essence of due process. The right for defendants to be able to raise affirmative defenses is a necessary protection for private property.

The decision of the Court of Appeals in this case is not consistent with *Foman v. Davis*, 371 U.S. 178 (1962). In *Foman*, a plaintiff whose contract claim was dismissed because the applicable state statute of frauds barred it, sought to amend her complaint to assert a *quantum meruit* claim. 371 U.S. at 179. The District Court overruled the motion; the Court of Appeals affirmed. *Id.* This Court instructed the lower courts then that the right to amend should be freely granted except where certain limited circumstances existed. 371 U.S. at 182. None of these limited circumstances existed when Multi Resource U.S.A., Inc and Mr. Wang were trying to amend their complaint. Amendment would not have caused undue delay; it was sought prior to at the initial pretrial conference. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Lawrey v. Texas A & M Univ. Sys.*, 117 F.3d 242, 245 (5th Cir. 1997). Multi Resource USA and Wang are not now

and have not in the past been acting in bad faith. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Lawrey v. Texas A & M Univ. Sys.*, 117 F.3d 242, 245 (5th Cir. 1997). Multi Resource and Wang brought forth admissions of the Maos and Cheer in the state court action in support of their position, a Cheer stock certificate signed by the Maos in support of their position, a letter signed by Andrew Mao under penalty of perjury all predating the federal litigation. R. 558-529 & 413-385. Multi Resource USA and Wang did not have dilatory motive. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Lawrey v. Texas A & M Univ. Sys.*, 117 F.3d 242, 245 (5th Cir. 1997). If the trial court had merely not reversed itself Feb. 22, 1999, the deadline for the summary judgment need not have changed, and Multi Resource and Wang would not have had anything to complain about in this petition. No deficiencies in the pleadings had been alleged. *Foman v. Davis*, 371 U.S. 178, 182 (1962);

Lawrey v. Texas A & M Univ. Sys., 117 F.3d 242, 245 (5th Cir. 1997). There would have been no undue prejudice to the opposing parties by virtue of the allowance of the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Lawrey v. Texas A & M Univ. Sys.*, 117 F.3d 242, 245 (5th Cir. 1997). This amendment would not have been futile. Under the circumstances, Multi Resource U.S.A. and Wang should have had the right to make Mr. Zhang show that he had been authorized to bring the suit on behalf of Jinhai.

Multi Resource U.S.A., Inc. and Mr. Wang have suffered an injustice. Jinhai's summary judgment evidence in no way shows that the funds originally came from it. Multi Resource U.S.A., Inc. and Mr. Wang presently have evidence that the accounts described in Jinhai's summary judgment evidence do not exist. Multi Resource U.S.A. and Mr. Wang showed the purported sources of the funds were not affiliated with Jinhai and that

Mr. Zhang lost his authority to act on behalf of Jinhai before Jinhai purportedly intervened in the federal suit.

Presently federal district courts dispose of practically all of their civil cases through summary terminations. The district courts are going too far when they do not let defendants plead. If the Supreme Court takes this case it will show that Federal Rule of Civil Procedure 15 is not a gag rule with which to deny defendants the most basic of due process rights, the right to petition for redress of grievances. This decision would instruct America's district court judges that parties, especially defendants, must be granted an opportunity to plead their cases. The number of cases disposed of even before pleadings can be filed is scandalous. Mr. Jian Dong Wang and his corporation from American Georgia, Multi Resource U.S.A., Inc., ask you to correct this pandemic problem.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bob Mabry
Counsel of Record for Petitioners
Suite 900
440 Louisiana
Houston, TX 77002-4426
713-236-7784

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Civil Action: United States Courts
Southern District of Texas
Filed EC
Aug 28 1998
Michael N. Milby, Clerk of Court

H-98-2837

Order for Conference

1. Counsel shall appear for an initial pretrial before:

Lynn N. Hughes
United States District Judge

In Chambers
On January 5, 1999, at 2:00 p.m.
United States Court House
515 Rusk Avenue, Room 11122
Houston, Texas 77002-2605

2. No fewer than ten days before the conference, counsel must file a joint case management plan with the identity and purpose of witnesses, sources and types of documents, and other requirements for a prompt and inexpensive preparation of this case for disposition by motion or trial.

3. By the conference, counsel will have interviewed their clients and read the documents; readily available documents will have been exchanged at the plan meeting at the latest.

4. The court will set a schedule for initial preparation and may rule on motions pending or made at the conference.

5. Counsel who file or remove an action must serve a copy of this order.

6. Counsel who appears at the conference must have authority to bind the client and must know the facts.

7. Counsel must have discussed alternative dispute resolution with their clients and each other; at the conference, the court will consider whether a method of ADR is suited to this case.

8. Failure to comply with this order may result in sanctions, including dismissal of the action,

assessment of expenses, and prolonged tirades by the court.

By the Court

CASE FILE COPY

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Multi Resource USA, Inc., et al	§	
Plaintiffs,	§	
	§	
versus	§	Civil Action H-98-2837
	§	
Andrew C. Mao, et al.,	§	
	§	
Defendants.	§	

ORDER

Jinhai Group Corporation may intervene as a plaintiff.

Fed.R.Civ.P.24.

Signed December 16, 1998, at
Houston, Texas

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX C

MULTI RESOURCE	§	
USA, INC. and JIAN	§	
DONG WANG	§	
vs.	§	
	§	
ANDREW C. MAO	§	
KATHY H. MAO	§	
And CHEER	§	
INTERNATIONAL,	§	
INC.	§	
	§	NO. H-98-2837
	§[Jury Trial Demanded]	
JINHAI GROUP	§	
CORPORATION	§	
	§	
VS.	§	
	§	
CHEER	§	
INTERNATIONAL,	§	
INC., ANDREW C.	§	
MAO, KATHYH. MAO	§	

MULTI §
RESOURCE USA, INC. §
and §
JIAN DONG WANG §

JOINT MOTION FOR LEAVE TO AMEND PLEADINGS

TO THE HONORABLE JUDGE HUGHES:

In connection with the preparation of their Joint Discovery/Case Management Plan under the Fed.R.Civ.P.Rule 26(f), the parties to this action have recognized the need to amend their pleadings at an early date. They jointly move, therefore, that all parties to this lawsuit be given leave to amend their pleadings on or before January 25, 1999.

Respectfully submitted,

Kenneth L. Rothey & Associates, P.C.

By: /s/ Mr. Kenneth Rothey
Mr. Kenneth Rothey
State Bar No.

Mr. Bob Mabry
State Bar No. 12750980
Regency Square Tower
6200 Savoy Drive, Suite 150
Houston, Texas 77036
Telephone No.: (713) 781-9119
Via Facsimile: (713) 781-9130
Attorneys for Plaintiffs Multi Resource USA, Inc. and Jian Dong Wang

Bond, Taylor & Lee, L.L.P.

By:/s/ Ms. Susan J. Taylor
Ms. Susan J. Taylor
State Bar No. 19723665
1021 Main Street, Suite 1220
Houston, Texas 77002
Telephone No.: (713) 759-9970
Via Facsimile: (713) 759-1980

Attorneys for Defendant Andrew C. Mao, Kathy H. Mao, and Cheer International

Bracewell & Patterson, L.L.P.

By: /s/ Ronald Scott
Ronald Scott
State Bar No. 17913500

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711 Louisiana, Suite 2900
Houston, Texas 77002
Telephone: (713) 223-2900
Telecopy: (713) 221-1212

Attorney for Plaintiff Jinhai
Group Corporation

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Multi Resource USA, Inc., et al	§	
Plaintiffs,	§	
versus	§	Civil Action H-98-2837
Andrew C. Mao, et al.,	§	
Defendants.	§	

CONFERENCE MEMORANDUM

Appearances

Counsel:	Representing:

Kenneth Rothey — Plaintiffs
Bob Mabry

Ray Cox — Defendants
Susan Taylor

Ronald Scott — Intervenor
Jerry Zhong

Date: 1-5-99 Reporter: ____

At the conference, these rulings were made:

By Feb. 5, all parties must make their initial disclosures.
By Feb. 12, Jinhai must file the funds flow chart.
Parties must amend the pleading by March 1.

☐ Trial preparation to be completed by: ____

☐ All motions not expressly decided are denied without prejudice.

Scheduling

☐ Review _____ deadline _____

☐ All motions not expressly decided are denied without prejudice.

☐ Counsel are to complete and return a scheduling order by: _____

x A pretrial conference.

☐ A hearing

is set for February 22, 1999 at 3:30 p.m.

Trial

☐ Jury Estimated days to try (at 5.5. hours per day):

☐ Bench

☐ Trial set: _____Time: _____

Joint PTO due: _____

File this memorandum and enter rulings.

/s/Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Multi Resource USA, Inc., et al	§	
Plaintiffs,	§	
versus	§	Civil Action H-98-2837
Andrew C. Mao, et al.,	§	
Defendants.	§	

CONFERENCE MEMORANDUM

Appearances

Counsel:	Representing:

Kenneth Rothey Plaintiff
Bob Mabry

Ray Cox Defendants
Susan Taylor

Ronald Scott Movant Jinhai Group
Jerry Zhong

Date:2-22-99 Reporter:__

At the conference, these rulings were made:

Jinhai will move for summary judgment by March 26.
Multi Resource will respond by April 16.
March 1 deadline to amend pleadings is terminated.
Multi Resource did not furnish the court with documents to support its version of the flow of funds and declined

☐ Trial preparation to be completed by:_____

☐ All motions not expressly decided are denied without prejudice.

Scheduling

☐ Review deadline _____

☐ All motions not expressly decided are denied without prejudice.

☐ Counsel are to complete and return a scheduling order -by: _____

☐ A pretrial conference X- A hearing

is set for 4-26-99 at 10:00.

Trial

☐ Jury Estimated days to try (at 5.5. hours per day):

☐ Bench

☐ Trial set: _____Time: _____

Joint PTO due: _____

File this memorandum and enter rulings.

/s/Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Multi Resource USA, Inc., et al	§	
	§	
Plaintiffs,	§	
	§	
versus	§	Civil Action H-98-2837
	§	
Andrew C. Mao, et al.,	§	United States District Court
	§	Southern District of Texas
Defendants.	§	Entered APR 23 1999 Michael N. Milby, Clerk

ORDER

Multi Resource USA's motion for a continuance is denied.

Signed April 22, 1998, at Houston, Texas

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Multi Resource USA, Inc., et al	§	
	§	
Plaintiffs,	§	
	§	
versus	§	Civil Action
H-98-2837	§	
Andrew C. Mao, et al.,	§	United States District Court
	§	Southern
District of Texas		
Defendants.	§	Entered

MAY 13 1999
Michael N. Milby, Clerk

Final Judgment

1. Against the claims of Multi Resource U.S.A., Inc., Jian Dong Wang, and Cheer International, Inc., Jinhai Group Corporation has title and possession to this real property.

Tract One: A parcel or tract of land containing 8.290 acres being part of Glendale Subdivision according to the map recorded in Volume 69, Page 640 of the Harris County Map Records and Volume 72, Page 6 of the Harris County Deed Records, and also being part of the John

Brown Survey, Abstract No. 8, in Houston, Harris County, Texas.

Tract Two: A parcel or tract of land containing 12.7577 acres being part of Glendale Subdivision according to the map recorded in Volume 69, Page 640 of the Harris County Map Records and Volume 72, Page 6 of the Harris County Deed Records, and also being part of the John

Brown Survey,
Abstract No. 8,
in Houston,
Harris County,
Texas.

2. Neither Multi Resource U.S.A., Inc., nor Jian Dong Wang owned the $669,330 that was used to buy the 20.9 acres.

3. The transfer of funds to Cheer International, Inc. by Multi Resource U.S.A., Inc. and Jian Dong Wang was not consideration for the issuance of stock in Cheer International, Inc., to Tianjin Multi Resource International Co., Inc.

4. Multi Resource U.S.A., Inc. and Jian Dong Wang take nothing from Andrew C. Mao, Kathy H. Mao, Cheer International, Inc. and Jinhai Group Corporation.

5. Costs are taxed against Multi Resource U.S.A., Inc. and Jian Dong Wang.

Signed May 12, 1999, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX F

United States Courts
Southern District of Texas
Filed
MAY 21, 1999
Michael N. Milby, Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
No. H-98-2837

MULTI	§	
RESOURCE	§	
USA, INC,. a	§	
Georgia	§	
Corporation,	§	
JIAN	§	
DONG WANG	§	
Plaintiffs	§	
	§	
v.	§	Notice of Appeal
	§	
ANDREW C.	§	

MAO, KATHY H. MAO, and CHEER INTERNATIONAL, INC.	§ § § §	
Defendants		
	§	
JINHAI GROUP CORPORATION	§ §	
	§	
v.	§	
	§	
CHEER INTERNATIONAL, INC., ANDREW C. MAO, KATHY H. MAO, MULTI RESOURCE USA, INC., and JIAN DONG WANG	§ § § § § § §	

Notice is hereby given that MULTI RESOURCE USA, INC. and JIAN DONG WANG, plaintiffs in the above named case, hereby appeal to the United States Court of Appeals for the

Fifth Circuit from the final judgment entered in this action on the 13th day of May 1999.

Respectfully Submitted,

/s/ Bob Mabry
Bob Mabry
TBN: 12750980
Attorney for Plaintiffs
Regency Square Tower
6200 Savoy Drive, Suite 150
Houston, Texas 77036
(713) 781-9119
Fax: (713) 781-9130

Of Counsel:
Kenneth L. Rothey & Associates, P.C.

Kenneth L. Rothey
TBN: 173171001

APPENDIX F

U.S. COURT OF APPEALS
FILED
MAR 02 2000
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20509

MULTI SOURCE USA, INC., a Georgia Corporation; JIAN DONG WANG,

Plaintiffs-Appellants,

versus

JINHAI GROUP CORPORATION,

Intervenor-Plaintiff-Appellee,

versus

ANDREW C. MAO; KATHY H. MAO;
CHEER
INTERNATIONAL, INC.,

Defendants-Appellees

Appeal from the United States District
Court
for the Southern District of Texas
(H-98-CV-2837

Before HIGGINBOTHAM and PARKER,
Circuit Judges, and ATLAS,* District
Judge.
PER CURIAM:**

With the benefit of oral argument, we are persuaded that the grant of summary judgment be affirmed.

AFFIRMED.

---

*District Judge of the Southern District of Texas, sitting by designation.

**Pursuant to 5th Cir. 47.5, the court has determined that this option should not be published and is not preceded except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

APPENDIX H

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

March 17, 2000

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 99-20509 Multi Resource USA v. Mao
USDC No. H-98-CV-2837

An extension of time has been granted to and including 3/23/00 for filing a petition for rehearing in the appeal referenced above.

You are reminded that the petition for rehearing must be physically received in this office by the due date.

Sincerely,
CHARLES R. FULBRUGE III,
Clerk

By: /s/Mary Ann Lopiparo
Mary Ann Lopiparo, Deputy Clerk

Mr. Bobby Scott Mabry
Ms. Susan J. Taylor
Mr. Ronald S. Scott
Mr. Michael V. Young
MOT-2

APPENDIX I

U.S. COURT OF APPEALS
FILED
APR 24 2000
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 99-20509

MULTI RESOURCE USA INC, a Georgia Corporation; JIAN DONG WANG

Plaintiffs – Appellants

v.

JINHAI GROUP CORPORATION

Intervenor – Plaintiff – Appellee

v.

ANDREW C MAO; KATHY H MAO;
CHEER INTERNATIONAL INC

Defendants – Appellees

Appeal from the United States District Court for the Southern District of Texas, Houston

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ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 3/2/00, 5 Cir., _____, _____ F.3d_____)

Before HIGGINBOTHAN and PARKER, Circuit Judges, and ATLAS, * District Judge.

PER CURIAM,

(√) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED.R.APP.P. and 5TH CIR.R.35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor, (FED.R.APP.P. and 5TH CIR.R.35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause in banc, and a majority of the judges in active service not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT

/s/ Robert Parker
United States Circuit Judge

*District Judge of the Southern District of Texas, sitting by designation.

REHG-4A